

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 543**

Introduced by Campbell, 25.

Read first time January 21, 2009

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to motor vehicle industry licensing; to amend  
2 section 60-1403.01, Reissue Revised Statutes of Nebraska,  
3 and section 60-1401.02, Revised Statutes Cumulative  
4 Supplement, 2008; to provide an exemption from licensing  
5 requirements; to define a term; and to repeal the  
6 original sections.  
7 Be it enacted by the people of the State of Nebraska,

1                   Section 1. Section 60-1401.02, Revised Statutes  
2 Cumulative Supplement, 2008, is amended to read:

3                   60-1401.02 For purposes of sections 60-1401.01 to 60-1440  
4 and 60-2601 to 60-2607, unless the context otherwise requires:

5                   (1) Person means every natural person, firm, partnership,  
6 limited liability company, association, or corporation;

7                   (2) Association means any two or more persons acting  
8 with a common purpose, regardless of the relative degrees of  
9 involvement, and includes, but is not limited to, the following  
10 persons so acting:

11                   (a) A person and one or more of his or her family  
12 members. For purposes of this subdivision, family member means an  
13 individual related to the person by blood, marriage, adoption, or  
14 legal guardianship as the person's spouse, child, parent, brother,  
15 sister, grandchild, grandparent, ward, or legal guardian or any  
16 individual so related to the person's spouse; and

17                   (b) Two or more persons living in the same dwelling unit,  
18 whether or not related to each other;

19                   (3) Motor vehicle dealer means any person, other than a  
20 bona fide consumer, actively and regularly engaged in the act of  
21 selling, leasing for a period of thirty or more days, or exchanging  
22 new or used motor vehicles, trailers, and manufactured homes who  
23 buys, sells, exchanges, causes the sale of, or offers or attempts  
24 to sell new or used motor vehicles. Such person is a motor vehicle  
25 dealer and subject to sections 60-1401.01 to 60-1440. Motor vehicle

1 dealer does not include a lessor who was not involved in or  
2 associated with the selection, location, acquisition, or supply of  
3 a motor vehicle which is the subject of a lease agreement;

4 (4) Trailer dealer means any person, other than a bona  
5 fide consumer, actively and regularly engaged in the business of  
6 selling or exchanging new or used trailers and manufactured homes;

7 (5) Wrecker or salvage dealer means any person who  
8 acquires one or more motor vehicles or trailers for the purpose  
9 of dismantling them for the purpose of reselling the parts or  
10 reselling the vehicles as scrap;

11 (6) Motor vehicle means any vehicle for which evidence of  
12 title is required as a condition precedent to registration under  
13 the laws of this state but does not include trailers;

14 (7) Used motor vehicle means every motor vehicle which  
15 has been sold, bargained, exchanged, or given away or for which  
16 title has been transferred from the person who first acquired  
17 it from the manufacturer, importer, dealer, or agent of the  
18 manufacturer or importer. A new motor vehicle is not considered  
19 a used motor vehicle until it has been placed in use by a bona  
20 fide consumer, notwithstanding the number of transfers of the motor  
21 vehicle;

22 (8) New motor vehicle means all motor vehicles which are  
23 not included within the definition of a used motor vehicle in this  
24 section;

25 (9) Trailer means semitrailers and trailers as defined

1 in sections 60-348 and 60-354, respectively, which are required to  
2 be licensed as commercial trailers, other vehicles without motive  
3 power constructed so as to permit their being used as conveyances  
4 upon the public streets and highways and so constructed as not to  
5 be attached to real estate and to permit the vehicle to be used  
6 for human habitation by one or more persons, and camping trailers,  
7 slide-in campers, fold-down campers, and fold-down tent trailers.  
8 Machinery and equipment to which wheels are attached and designed  
9 for being towed by a motor vehicle are excluded from the provisions  
10 of sections 60-1401.01 to 60-1440;

11 (10) Motorcycle dealer means any person, other than a  
12 bona fide consumer, actively and regularly engaged in the business  
13 of selling or exchanging new or used motorcycles;

14 (11) Motorcycle means every motor vehicle, except a  
15 tractor, having a seat or saddle for use of the rider and designed  
16 to travel on not more than three wheels in contact with the  
17 ground and for which evidence of title is required as a condition  
18 precedent to registration under the laws of this state;

19 (12) Auction means a sale of motor vehicles and trailers  
20 of types required to be registered in this state, except such  
21 vehicles as are eligible for registration pursuant to section  
22 60-3,198, sold or offered for sale at which the price offered is  
23 increased by the prospective buyers who bid against one another,  
24 the highest bidder becoming the purchaser. The holding of a farm  
25 auction or an occasional motor vehicle or trailer auction of not

1 more than two auctions in a calendar year does not constitute an  
2 auction subject to sections 60-1401.01 to 60-1440;

3 (13) Auction dealer means any person engaged in the  
4 business of conducting an auction for the sale of motor vehicles  
5 and trailers;

6 (14) Supplemental motor vehicle, trailer, motorcycle,  
7 or motor vehicle auction dealer means any person holding either  
8 a motor vehicle, trailer, motorcycle, or motor vehicle auction  
9 dealer's license engaging in the business authorized by such  
10 license at a place of business that is more than three hundred feet  
11 from any part of the place of business designated in the dealer's  
12 original license but which is located within the city or county  
13 described in such original license;

14 (15) Motor vehicle, motorcycle, or trailer salesperson  
15 means any person who, for a salary, commission, or compensation of  
16 any kind, is employed directly by only one specified licensed  
17 Nebraska motor vehicle dealer, motorcycle dealer, or trailer  
18 dealer, except when the salesperson is working for two or more  
19 dealerships with common ownership, to sell, purchase, or exchange  
20 or to negotiate for the sale, purchase, or exchange of motor  
21 vehicles, motorcycles, or trailers. A person owning any part  
22 of more than one dealership may be a salesperson for each of  
23 such dealerships. For purposes of this section, common ownership  
24 means that there is at least an eighty percent interest in  
25 each dealership by one or more persons having ownership in such

1 dealership;

2           (16) Manufacturer means any person, resident or  
3 nonresident of this state, who is engaged in the business of  
4 distributing, manufacturing, or assembling new motor vehicles,  
5 trailers, or motorcycles and also has the same meaning as the term  
6 franchisor as used in sections 60-1401.01 to 60-1440;

7           (17) Factory representative means a representative  
8 employed by a person who manufactures or assembles motor vehicles,  
9 motorcycles, or trailers, or by a factory branch, for the purpose  
10 of promoting the sale of its motor vehicles, motorcycles, or  
11 trailers to, or for supervising or contacting, its dealers or  
12 prospective dealers in this state;

13           (18) Distributor means a person, resident or nonresident  
14 of this state, who in whole or in part sells or distributes  
15 new motor vehicles, trailers, or motorcycles to dealers or who  
16 maintains distributors or representatives who sell or distribute  
17 motor vehicles, trailers, or motorcycles to dealers and also has  
18 the same meaning as the term franchisor as used in sections  
19 60-1401.01 to 60-1440;

20           (19) Finance company means any person engaged in the  
21 business of financing sales of motor vehicles, motorcycles, or  
22 trailers, or purchasing or acquiring promissory notes, secured  
23 instruments, or other documents by which the motor vehicles,  
24 motorcycles, or trailers are pledged as security for payment of  
25 obligations arising from such sales and who may find it necessary

1 to engage in the activity of repossession and the sale of the motor  
2 vehicles, motorcycles, or trailers so pledged;

3 (20) Franchise means a contract between two or more  
4 persons when all of the following conditions are included:

5 (a) A commercial relationship of definite duration or  
6 continuing indefinite duration is involved;

7 (b) The franchisee is granted the right to offer and sell  
8 motor vehicles manufactured or distributed by the franchisor;

9 (c) The franchisee, as an independent business,  
10 constitutes a component of the franchisor's distribution system;

11 (d) The operation of the franchisee's business is  
12 substantially associated with the franchisor's trademark, service  
13 mark, trade name, advertising, or other commercial symbol  
14 designating the franchisor; and

15 (e) The operation of the franchisee's business is  
16 substantially reliant on the franchisor for the continued supply of  
17 motor vehicles, parts, and accessories;

18 (21) Franchisee means a new motor vehicle dealer who  
19 receives motor vehicles from the franchisor under a franchise and  
20 who offers and sells such motor vehicles to the general public;

21 (22) Franchisor means a person who manufactures or  
22 distributes motor vehicles and who may enter into a franchise;

23 (23) Community means a franchisee's area of  
24 responsibility as stipulated in the franchise;

25 (24) Line-make means the motor vehicles that are offered

1 for sale, lease, or distribution under a common name, trademark,  
2 service mark, or brand name of the franchisor or manufacturer of  
3 the motor vehicle;

4 (25) Consumer care means the performance, for the public,  
5 of necessary maintenance and repairs to motor vehicles;

6 (26) Sale, selling, and equivalent expressions mean the  
7 attempted act or acts either as principal, agent, or salesperson  
8 or in any capacity whatsoever of selling, bartering, exchanging,  
9 or otherwise disposing of or negotiating or offering or attempting  
10 to negotiate the sale, purchase, or exchange of or interest in any  
11 motor vehicle, trailer, or motorcycle, including the leasing of any  
12 motor vehicle, trailer, or motorcycle for a period of thirty or  
13 more days with a right or option to purchase under the terms of the  
14 lease;

15 (27) Established place of business means a permanent  
16 location within this state, easily accessible to the public, owned  
17 or leased by the applicant or a licensee for at least the term  
18 of the license year, and conforming with applicable zoning laws,  
19 at which the licensee conducts the business for which he or she  
20 is licensed and may be contacted by the public during posted  
21 reasonable business hours which shall be not less than forty  
22 hours per week. The established place of business shall have the  
23 following facilities: (a) Office space in a building or mobile  
24 home, which space shall be clean, dry, safe, and well lighted  
25 and in which shall be kept and maintained all books, records,

1 and files necessary for the conduct of the licensed business,  
2 which premises, books, records, and files shall be available for  
3 inspection during regular business hours by any peace officer or  
4 investigator employed or designated by the board. Dealers shall,  
5 upon demand of the board's investigator, furnish copies of records  
6 so required when conducting any investigation of a complaint; (b)  
7 a sound and well-maintained sign which is legible from a public  
8 road and displayed with letters not less than eight inches in  
9 height and one contiguous area to display ten or more motor  
10 vehicles, motorcycles, or trailers in a presentable manner; (c)  
11 adequate repair facilities and tools to properly and actually  
12 service warranties on motor vehicles, motorcycles, or trailers sold  
13 at such place of business and to make other repairs arising out  
14 of the conduct of the licensee's business or, in lieu of such  
15 repair facilities, the licensee may enter into a contract for the  
16 provision of such service and file a copy thereof annually with the  
17 board and shall furnish to each buyer a written statement as to  
18 where such service will be provided as required by section 60-1417.  
19 The service facility shall be located in the same county as the  
20 licensee unless the board specifically authorizes the facility to  
21 be located elsewhere. Such facility shall maintain regular business  
22 hours and shall have suitable repair equipment and facilities to  
23 service and inspect the type of vehicles sold by the licensee.  
24 Investigators of the board may certify ongoing compliance with  
25 the service and inspection facilities or repair facilities; and

1 (d) an operating telephone connected with a public telephone  
2 exchange and located on the premises of the established place of  
3 business with a telephone number listed by the public telephone  
4 exchange and available to the public during the required posted  
5 business hours. A mobile truck equipped with repair facilities  
6 to properly perform warranty functions and other repairs shall be  
7 deemed adequate repair facilities for trailers. The requirements of  
8 this subdivision shall apply to the place of business authorized  
9 under a supplemental motor vehicle, motorcycle, or trailer dealer's  
10 license;

11 (28) Retail, when used to describe a sale, means a sale  
12 to any person other than a licensed dealer of any kind within the  
13 definitions of this section;

14 (29) Factory branch means a branch office maintained in  
15 this state by a person who manufactures, assembles, or distributes  
16 motor vehicles, motorcycles, or trailers for the sale of such motor  
17 vehicles, motorcycles, or trailers to distributors or dealers  
18 or for directing or supervising, in whole or in part, its  
19 representatives in this state;

20 (30) Distributor representative means a representative  
21 employed by a distributor or distributor branch for the same  
22 purpose as set forth in the definition of factory representative in  
23 this section;

24 (31) Board means the Nebraska Motor Vehicle Industry  
25 Licensing Board;

1           (32) Scrap metal processor means any person engaged in  
2 the business of buying vehicles, motorcycles, or parts thereof  
3 for the purpose of remelting or processing into scrap metal or  
4 who otherwise processes ferrous or nonferrous metallic scrap for  
5 resale. No scrap metal processor shall sell vehicles or motorcycles  
6 without obtaining a wrecker or salvage dealer license;

7           (33) Designated family member means the spouse, child,  
8 grandchild, parent, brother, or sister of the owner of a new  
9 motor vehicle dealership who, in the case of the owner's death,  
10 is entitled to inherit the ownership interest in the new motor  
11 vehicle dealership under the terms of the owner's will, who has  
12 been nominated in any other written instrument, or who, in the case  
13 of an incapacitated owner of such dealership, has been appointed  
14 by a court as the legal representative of the new motor vehicle  
15 dealer's property;

16           (34) Bona fide consumer means an owner of a motor  
17 vehicle, motorcycle, or trailer who has acquired such vehicle for  
18 use in business or for pleasure purposes, who has been granted a  
19 certificate of title on such motor vehicle, motorcycle, or trailer,  
20 and who has registered such motor vehicle, motorcycle, or trailer,  
21 all in accordance with the laws of the residence of the owner,  
22 except that no owner who sells more than eight registered motor  
23 vehicles, motorcycles, or trailers within a twelve-month period  
24 shall qualify as a bona fide consumer;

25           (35) Violator means a person acting without a license or

1 registration as required by sections 60-1401.01 to 60-1440;

2 (36) Manufactured home means a structure, transportable  
3 in one or more sections, which in the traveling mode is eight body  
4 feet or more in width or forty body feet or more in length or when  
5 erected on site is three hundred twenty or more square feet and  
6 which is built on a permanent chassis and designed to be used as  
7 a dwelling with or without a permanent foundation when connected  
8 to the required utilities and includes the plumbing, heating, air  
9 conditioning, and electrical systems contained in the structure,  
10 except that manufactured home includes any structure that meets  
11 all of the requirements of this subdivision other than the size  
12 requirements and with respect to which the manufacturer voluntarily  
13 files a certification required by the United States Secretary  
14 of Housing and Urban Development and complies with the standards  
15 established under the National Manufactured Housing Construction  
16 and Safety Standards Act of 1974, as such act existed on September  
17 1, 2001, 42 U.S.C. 5401 et seq.; and

18 (37) Dealer's agent means a person who acts as a buying  
19 agent for one or more motor vehicle dealers, motorcycle dealers, or  
20 trailer dealers; and-

21 (38) Specialty vehicle means a vehicle which has a gross  
22 vehicle weight greater than eight thousand five hundred pounds  
23 and which is generally sold only to a political subdivision in  
24 the performance of its governmental functions. Specialty vehicle  
25 includes, but is not limited to, a fire truck, a ladder truck,

1 a fire pumper truck, a street sweeper, an ambulance, a hazardous  
2 materials vehicle, and a mobile command vehicle.

3           Nothing in sections 60-1401.01 to 60-1440 shall apply to  
4 the State of Nebraska or any of its agencies or subdivisions. No  
5 insurance company, finance company, public utility company, fleet  
6 owner, or other person coming into possession of any motor vehicle,  
7 motorcycle, or trailer, as an incident to its regular business, who  
8 sells or exchanges the motor vehicle, motorcycle, or trailer shall  
9 be considered a dealer except persons whose regular business is  
10 leasing or renting motor vehicles, motorcycles, or trailers.

11           Sec. 2. Section 60-1403.01, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13           60-1403.01 (1) No person shall engage in the business as,  
14 serve in the capacity of, or act as a motor vehicle, trailer, or  
15 motorcycle dealer, wrecker or salvage dealer, salesperson, auction  
16 dealer, dealer's agent, manufacturer, factory branch, factory  
17 representative, distributor, distributor branch, or distributor  
18 representative in this state without being licensed by the  
19 board under the provisions of sections 60-1401.01 to 60-1440.  
20 No salesperson's license shall be issued to any person under the  
21 age of sixteen, and no dealer's license shall be issued to any  
22 minor. No wrecker or salvage dealer's license shall be issued or  
23 renewed unless the applicant has a permanent place of business  
24 at which the activity requiring licensing is performed and which  
25 conforms to all local laws.

1           (2) A license issued under sections 60-1401.01 to 60-1440  
2 shall authorize the holder thereof to engage in the business or  
3 activities permitted by the license subject to sections 60-1401.01  
4 to 60-1440 and the rules and regulations adopted and promulgated by  
5 the board under such sections.

6           (3) This section shall not apply to a licensed real  
7 estate salesperson or broker who negotiates for sale or sells a  
8 trailer for any individual who is the owner of not more than two  
9 trailers.

10           (4) This section shall not apply to a manufacturer,  
11 factory representative, distributor, dealer, or salesperson that  
12 is responding to a request for bids, a purchase order, or a  
13 cooperative purchasing arrangement regarding a specialty vehicle  
14 from a city of the primary or metropolitan class or a county within  
15 which a city of the primary or metropolitan class is located.

16           Sec. 3. Original section 60-1403.01, Reissue Revised  
17 Statutes of Nebraska, and section 60-1401.02, Revised Statutes  
18 Cumulative Supplement, 2008, are repealed.